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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 MACK PRICE, ) NO. EDCV 08-01749 SS  
12 )  
13 Plaintiff, )  
14 )  
15 v. ) MEMORANDUM DECISION AND ORDER  
16 )  
17 MICHAEL J. ASTRUE, )  
18 Commissioner of the Social )  
19 Security Administration, )  
20 )  
21 Defendant. )  
22 \_\_\_\_\_ )

23 I.  
24 INTRODUCTION  
25

26 Mack Price ("Plaintiff") brings this action seeking to overturn the  
27 decision of the Commissioner of the Social Security Administration  
28 (hereinafter the "Commissioner" or the "Agency") denying his application  
for Supplemental Security Income ("SSI") and Disability Insurance  
Benefits ("DIB"). The parties consented, pursuant to 28 U.S.C. §  
636(c), to the jurisdiction of the undersigned United States Magistrate  
Judge. This matter is before the Court on the parties' Joint

Stipulation ("Jt. Stip."), filed on July 27, 2009. For the reasons stated below, the decision of the Commissioner is AFFIRMED.

## II.

## PROCEDURAL HISTORY

Plaintiff filed an application for SSI and DIB on July 24, 2006. (Administrative Record ("AR") 42). He claimed that his disability onset date was October 20, 2003. (AR 95). The Commissioner denied benefits on November 15, 2006. (AR 49). On December 11, 2006, Plaintiff filed a request for reconsideration. (AR 54). The Commissioner upheld the initial denial of benefits on April 12, 2007. (AR 57). On May 4, 2007, Plaintiff requested a hearing before an Administrative Law Judge ("ALJ"). (AR 62).

On April 4, 2008, ALJ Lowell Fortune held a hearing to consider Plaintiff's claims. (AR 16). On April 25, 2008, the ALJ found that Plaintiff was not disabled. (See AR 42-48). Plaintiff requested a review of the hearing decision on May 15, 2008. (AR 5). The Appeals Council denied this request on October 2, 2008. (AR 1). Plaintiff filed the instant Complaint on December 5, 2008.

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III.

## FACTUAL HISTORY

A. Generally

Plaintiff was born on November 9, 1970 and was 38 years old at the time of the hearing. (AR 17). He attended school through eleventh grade. (Id.). He claims that he is unable to write, and can only read "a little bit." (AR 20). Plaintiff can read "small children's books." (Id.). Until October 20, 2003, Plaintiff worked for Albertson's as a forklift driver. (AR 18-19). According to Plaintiff, he was fired from his job at Albertson's because of his schizophrenia. (AR 21).

Plaintiff claims that he has been unable to work since October 20, 2003 because of his paranoid schizophrenia and the side effects of the medication he takes to control it. (AR 23). Plaintiff is married, (AR 18), and has a child. (AR 30). He has a driver's license and drives to the grocery store and to his medical appointments. (Id.). Plaintiff does not think that he will ever be able to return to work. (AR 29). He does not want to go back to work. (Id.).

B. Relevant Medical History1. Treating Physicians

Plaintiff sought treatment for his paranoid schizophrenia at Vista Community Counseling ("Vista"), beginning June 7, 2006. (AR 19, 247). Plaintiff complained of life-long depression, paranoia, delusions, and

1 auditory hallucinations. (AR 247). He admitted to daily use of  
2 marijuana and "speed," starting at age fifteen and continuing to his  
3 mid-twenties. (Id.). However, Plaintiff claimed to have been drug free  
4 for more than ten years. (Id.). At the time of his initial contact  
5 with Vista, the therapist found that Plaintiff was oriented to person,  
6 place, time, and situation, his speech as within normal limits, and he  
7 displayed average intellectual functioning. (AR 250). Although the  
8 therapist reported that Plaintiff's thought processes appeared to be  
9 within normal limits, she reported that he had difficulty focusing, and  
10 his insight and judgment were "poor at times." (Id.).  
11

12 Under the orders of Donna Barrozo, M.D., Plaintiff took Trazodone,  
13 Zoloft, and Geodon. (AR 243). Plaintiff reported that these drugs were  
14 working. (AR 233). With them, he had no auditory or visual  
15 hallucinations, no anxiety attacks, and they controlled his paranoia.  
16 (Id.). Plaintiff stated that he wanted to continue with the same  
17 medication. (Id.). As his treatment progressed in 2008, Plaintiff  
18 reported that his paranoia remained under control and that his activity  
19 increased. (AR 281). He regularly reported no side effects from the  
20 drugs. (See, e.g., AR 232-34, 279-87).  
21

22 On December 8, 2006, Plaintiff visited Dr. Deborah Small, M.D.<sup>1</sup> to  
23 establish care with a primary care physician. (AR 264). Dr. Small  
24 reported that Plaintiff's schizophrenia was stable at the time, and that  
25 he had no specific complaints. (Id.). On September 5, 2007, Plaintiff  
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27 <sup>1</sup> Both Plaintiff and the ALJ refer to Dr. Small as Dr. Sullivan.  
28 No Dr. Sullivan appears in the record.

1 returned to Dr. Small to request that she fill out paperwork to help him  
2 get disability payments for his schizophrenia. (AR 260-61). Dr. Small  
3 again reported that his schizophrenia was stable, but for the first time  
4 noted that "his medications [were] highly sedative." (AR 260). Dr.  
5 Small provided a "Medical Opinion Re: Ability to do Work-Related  
6 Activities" at the request of Plaintiff's counsel. (See AR 269-71).  
7 Dr. Small checked off boxes indicating that she found no limit to  
8 Plaintiff's ability to stand, walk, or sit during an eight hour day.  
9 (AR 269). She checked boxes indicating that Plaintiff could frequently  
10 climb stairs and that he had no restrictions from working around  
11 machinery. (AR 270-71). Nonetheless, she found that he would need to  
12 lie down at unpredictable intervals every day. (AR 270). Additionally,  
13 she concluded that "[Plaintiff's] medications for his schizophrenia make  
14 him so lethargic he is not safe." (Id.). Due to his medication, Dr.  
15 Sullivan found that Plaintiff "should not operate machinery [or] climb  
16 stairs." (AR 271).

## 17 18 **2. Consultative Physicians**

19  
20 On October 10, 2006, Linda Smith, M.D., a board eligible  
21 psychiatrist, examined Plaintiff at the Commissioner's request. (AR  
22 203-11). Dr. Smith ultimately concluded that Plaintiff's "psychiatric  
23 prognosis [was] fair." (AR 211). She found no impairments during  
24 Plaintiff's functional assessment. (Id.).  
25

26 The main conclusion that Dr. Smith reached as a result of her  
27 examination of Plaintiff was that he was not credibly reporting his  
28 symptoms. Dr. Smith repeated this conclusion throughout her report:

1 that Plaintiff "was not credible as a historian," (AR 203), that  
2 "[t]here [was] no evidence of [his] claims," (id.), that "[he did not  
3 appear to be genuine and truthful," (AR 208), that "there was  
4 substantial evidence of exaggeration and manipulation throughout the  
5 interview," (id.), and that she "[did] not believe the claims that  
6 [Plaintiff was] making and [she did] not believe [Plaintiff] is impaired  
7 in his ability to work." (AR 211).

8  
9 Plaintiff came to Dr. Smith's office with his wife, who filled out  
10 Plaintiff's questionnaire. (AR 203). Plaintiff's wife stated that she  
11 needed to attend the evaluation with Plaintiff because Plaintiff was  
12 unable to talk for himself. (AR 207-08). After Dr. Smith insisted on  
13 seeing Plaintiff alone, he agreed. (AR 208). Because Plaintiff "had no  
14 problem at all in the interview alone," Dr. Smith assumed that  
15 Plaintiff's wife's statements were "pre-rehearsed" so that she would  
16 have the opportunity to tell Dr. Smith about Plaintiff's impairments.  
17 (Id.).

18  
19 Plaintiff repeatedly told Dr. Smith that he was paranoid. (See,  
20 e.g., AR 204, 205, 207). However, Dr. Smith saw no evidence of paranoia  
21 when he calmly waited in her office, during the interview, or when she  
22 observed Plaintiff walking calmly through the parking lot after the  
23 interview. (AR 207-08). During the interview Plaintiff "smiled and  
24 chuckled . . . appropriate to topic." (AR 209).

25  
26 Dr. Smith did not believe Plaintiff's reports of his symptoms. His  
27 descriptions of them were vague, and she concluded that he was "trying  
28 to decide what the 'correct' answer should be and what he should say."

(AR 204). When Plaintiff did not know the "correct" answer he would not make a decision about his symptoms. (Id.). Plaintiff was vague about whether his auditory hallucinations sounded like they came from inside or outside of his head. (Id.). According to Dr. Smith, people who "actually do have auditory hallucinations" tend to perceive them as outside their heads, without any doubt. (Id.).

Plaintiff did not complain of any side effects of his medication. He claimed he was taking Zoloft and Geodon, and that this medication "helped] sometimes." (AR 206). Plaintiff drove himself to the clinic for the interview. (AR 207). Dr. Smith described his affect as "animated." (AR 209). Dr. Smith found that Plaintiff's Global Assessment of Functioning ("GAF") score was eighty-five, indicating that he was did not even have minimal symptoms.<sup>2</sup>

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<sup>2</sup> A GAF score is the clinician's judgment of the individual's overall level of functioning. It is rated with respect only to psychological, social and occupational functioning, without regard to impairments in functioning due to physical or environmental limitations. See American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, 32 (4th ed. 2000) (hereinafter "DSM IV").

A GAF of 81-90 denotes: "Absent of minimal symptoms (e.g. mild anxiety before an exam), good functioning in all areas, interested and involved in a wide range of activities, socially effective, generally satisfied with life, no more than everyday problems or concerns (e.g. an occasional argument with family members)." DSM IV at 34.

A State Agency psychiatrist, H. N. Hurwitz, M.D. examined Plaintiff on October 24, 2006. (AR 213-26). Dr. Hurwitz concluded that Plaintiff was "Not Significantly Limited" in sixteen of twenty categories and "Markedly Limited" in none. (AR 213-14). Dr. Hurwitz found Plaintiff to be "Moderately Limited" in

1. The ability to carry out detailed instructions;
2. The ability to maintain attention and concentration for extended periods;
3. The ability to interact appropriately with the general public; and
4. The ability to set realistic goals or make plans independently of others.

(Id.). Dr. Hurwitz found a mild restriction of activities of daily living, and moderate difficulties in maintaining social functioning and maintaining concentration, persistence, and pace. (AR 224). Dr. Hurwitz also found "one or two" episodes of decompensation. (Id.). Dr. Hurwitz ultimately concluded that Plaintiff "can sustain SRTs in a variety of settings and can relate adequately with coworkers and supervisors, but not with the public." (AR 215).

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1           **3. Plaintiff's Testimony**

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3           Plaintiff testified at the hearing. (AR 17-32). According to  
4 Plaintiff the side effects of his medication prevent him from working.  
5 (AR 23). These side effects include vomiting, dizziness, and fatigue.  
6 (Id.). Plaintiff claimed that he told Dr. Barrozo about these side  
7 effects. (AR 24).

8  
9           At the time of the hearing, Plaintiff testified that he was taking  
10 Geodon, Lexapro, and Benadryl. (Id.). Although Plaintiff had  
11 experienced visual and auditory hallucinations in the past, that  
12 medication eliminated them. (AR 25-26). Plaintiff claimed that his  
13 senses of touch and smell were inaccurate and that he was paranoid. (AR  
14 26-27). When asked if he felt well-rested in the daytime, Plaintiff  
15 responded: "Sometimes. Well, I'm mostly tired . . . ." (AR 28).  
16 According to Plaintiff, at the time of the hearing he was still having  
17 the side effects of vomiting, dizziness, and tiredness. (AR 28-29). He  
18 claimed to be depressed, which he described as feeling "a lot of anger,  
19 a lot of hate," as well as "sorrow." (AR 29).

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## IV.

## THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS

To qualify for disability benefits, a claimant must demonstrate a medically determinable physical or mental impairment that prevents him from engaging in substantial gainful activity<sup>3</sup> and that is expected to result in death or to last for a continuous period of at least twelve months. Reddick v. Chater, 157 F.3d 715, 721 (9th Cir. 1998) (citing 42 U.S.C. § 423(d)(1)(A)). The impairment must render the claimant incapable of performing the work he previously performed and incapable of performing any other substantial gainful employment that exists in the national economy. Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

To decide if a claimant is entitled to benefits, an ALJ conducts a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920. The steps are:

(1) Is the claimant presently engaged in substantial gainful activity? If so, the claimant is found not disabled. If not, proceed to step two.

(2) Is the claimant's impairment severe? If not, the claimant is found not disabled. If so, proceed to step three.

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<sup>3</sup> Substantial gainful activity means work that involves doing significant and productive physical or mental duties and is done for pay or profit. 20 C.F.R. §§ 404.1520, 416.910.

1 (3) Does the claimant's impairment meet or equal the  
2 requirements of any impairment listed at 20 C.F.R. Part  
3 404, Subpart P, Appendix 1? If so, the claimant is found  
4 disabled. If not, proceed to step four.

5  
6 (4) Is the claimant capable of performing her past work? If  
7 so, the claimant is found not disabled. If not, proceed  
8 to step five.

9  
10 (5) Is the claimant able to do any other work? If not, the  
11 claimant is found disabled. If so, the claimant is found  
12 not disabled.

13  
14 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari, 262 F.3d  
15 949, 953-54 (9th Cir. 2001) (citations omitted); 20 C.F.R. §§  
16 404.1520(b)-(g)(1), 416.920(b)-(g)(1).

17  
18 The claimant has the burden of proof at steps one through four, and  
19 the Commissioner has the burden of proof at step five. Bustamante, 262  
20 F.3d at 953-54. If, at step four, the claimant meets his burden of  
21 establishing an inability to perform the past work, the Commissioner  
22 must show that the claimant can perform some other work that exists in  
23 "significant numbers" in the national economy, taking into account the  
24 claimant's residual functional capacity, age, education, and work  
25 experience. Tackett, 180 F.3d at 1100; 20 C.F.R. § 416.920(g)(1). The  
26 Commissioner may do so by the testimony of a vocational expert ("VE") or  
27 by reference to the Medical-Vocational Guidelines appearing in 20 C.F.R.  
28 Part 404, Subpart P, Appendix 2 (commonly known as "the Grids").

1 Osenbrock v. Apfel, 240 F.3d 1157, 1162 (9th Cir. 2001). When a  
2 claimant has both exertional (strength-related) and nonexertional  
3 limitations, the Grids are inapplicable and the ALJ must take the  
4 testimony of a VE. Moore v. Apfel, 216 F.3d 864, 869 (9th Cir. 2000).

5  
6 V.

7 THE ALJ'S DECISION  
8

9 At step one, the ALJ found that Plaintiff had "not engaged in  
10 substantial gainful activity since October 20, 2003, the alleged onset  
11 date. (AR 44).  
12

13 At step two, the ALJ found that Plaintiff's impairment was  
14 affective disorder. (Id.). The ALJ determined that this impairment was  
15 severe. (Id.).  
16

17 At step three, the ALJ concluded that Plaintiff "does not have an  
18 impairment or combination of impairments that meets or medically equals  
19 one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix  
20 1." (Id. (internal citations omitted)).  
21

22 At step four, the ALJ found that Plaintiff had the residual  
23 functional capacity ("RFC") "to perform a full range of work at all  
24 exertional levels." (AR 45). The ALJ found several nonexertional  
25 limitations: "[Plaintiff] can perform simple, repetitive non-public  
26 tasks, with no responsibility for safety operations or for the safety of  
27 others and no work requiring hypervigilance [sic]. In addition, he is  
28 precluded from operating dangerous or fast moving equipment." (Id.).

1 The ALJ concluded that Plaintiff could not return to his past relevant  
2 work as a forklift operator. (AR 47).

3  
4 At step five, the ALJ considered Plaintiff's age, education, work  
5 experience, and residual functional capacity. (AR 48). He also  
6 considered the testimony of the VE that a person in Plaintiff's  
7 circumstances would be able to perform the requirements of occupations  
8 such as cleaner, hand packer, and hospital cleaner. (Id.). The ALJ  
9 found that Plaintiff "is capable of making a successful adjustment to  
10 other work that exists in significant numbers in the national economy."  
11 (Id.). The ALJ then concluded that Plaintiff is not disabled.

## 12 13 VI.

### 14 STANDARD OF REVIEW

15  
16 Under 42 U.S.C. § 405(g), a district court may review the  
17 Commissioner's decision to deny benefits. The court may set aside the  
18 Commissioner's decision when the ALJ's findings are based on legal error  
19 or are not supported by substantial evidence in the record as a whole.  
20 Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001); Smolen v.  
21 Chater, 80 F.3d 1273, 1279 (9th Cir. 1996).

22  
23 "Substantial evidence is more than a scintilla, but less than a  
24 preponderance." Reddick, 157 F.3d at 720. It is "relevant evidence  
25 which a reasonable person might accept as adequate to support a  
26 conclusion." Id. To determine whether substantial evidence supports a  
27 finding, the court must "'consider the record as a whole, weighing both  
28 evidence that supports and evidence that detracts from the

1 [Commissioner's] conclusion.'" Aukland, 257 F.3d at 1035 (quoting Penny  
2 v. Sullivan, 2 F.3d 953, 956 (9th Cir. 1993)). If the evidence can  
3 reasonably support either affirming or reversing that conclusion, the  
4 court may not substitute its judgment for that of the Commissioner.  
5 Reddick, 157 F.3d at 720-21.

## 6 7 VII.

### 8 DISCUSSION

#### 9 10 A. The ALJ Gave Appropriate Weight To The Treating Psychiatrist's 11 Opinion

12  
13 Plaintiff contends that "the ALJ did not properly consider Dr.  
14 [Small's] findings and failed to provide specific and legitimate reasons  
15 for doing so." (Jt. Stip. at 4). This Court disagrees.

16  
17 Although the treating physician's opinion is entitled to great  
18 deference, it is "not necessarily conclusive as to either the physical  
19 condition or the ultimate issue of disability." Morgan v. Comm'r of  
20 Soc. Sec. Admin., 169 F.3d 595, 600 (9th Cir. 1999). "When there is  
21 conflicting medical evidence, the Secretary must determine credibility  
22 and resolve the conflict." Matney v. Sullivan, 981 F.2d 1016, 1019 (9th  
23 Cir. 1992) (citing Allen v. Heckler, 749 F.2d 577, 579 (9th Cir. 1984)).  
24 When a treating doctor's opinion is contradicted by another doctor, "the  
25 Commissioner may not reject his opinion without providing 'specific and  
26 legitimate reasons' supported by substantial evidence." Lester v.  
27 Chater, 81 F.3d 821, 830 (9th Cir. 1995). "The opinion of a  
28 nonexamining medical advisor cannot by itself constitute substantial

1 evidence that justifies the rejection of the opinion of an examining or  
2 treating physician." Morgan, 169 F.3d at 602. However, a court can  
3 reject such an opinion "based in part on the testimony of a nontreating,  
4 nonexamining medical advisor." Id. (emphasis in original); See also  
5 Magallanes v. Bowen, 881 F.2d 747, 751-55 (9th Cir. 1989) (affirming an  
6 ALJ's decision awarding less weight to a treating physician based on the  
7 testimony of a nonexamining physician that was consistent with evidence  
8 in the record). In addition, the ALJ need not accept the opinion of any  
9 physician, including a treating physician, if that opinion is brief,  
10 conclusory, and inadequately supported by clinical findings. See  
11 Matney, 981 F.2d at 1019; Batson v. Comm'r of Soc. Sec. Admin., 359 F.3d  
12 1190, 1195 (9th Cir. 2004).

13  
14 Dr. Small's findings are discussed above in section III.B.1. Her  
15 treatment of Petitioner appears to have been limited to an initial  
16 interview establishing care, and one other meeting at which Plaintiff  
17 asked for help with his disability paperwork. Based on these two  
18 meetings, Dr. Small filled out the "Medical Opinion Re: Ability to do  
19 Work-Related Activities." (AR 269-71).

20  
21 Despite the brief nature of Dr. Small's relationship with  
22 Plaintiff, he argues that she "has indeed established that . . .  
23 Plaintiff is significantly limited due to his need to lie down at  
24 unpredictable intervals and from the lethargy and sedation that he  
25 experiences as a result of taking his psychiatric medications." (Jt.  
26 Stip. at 4). This claim arises from Dr. Small's findings that  
27 Plaintiff's "psychiatric medications for schizophrenia are so sedating  
28 that he should not operate machinery, climb stairs, or be left alone,"

1 (AR 271), and that "his medications for schizophrenia make him so  
2 lethargic he is not safe." (AR 270). There is no record of Plaintiff  
3 complaining about sedation to Dr. Small, so it is unclear how she formed  
4 these opinions. The finding of sedation is surprising given that in the  
5 course of his treatment Plaintiff generally reported no side effects  
6 from his medication, (see, e.g., AR 232-34, 279-87), and he never  
7 reported fatigue so severe that he could not be left alone. To the  
8 contrary, Plaintiff on several occasions reported driving a car. (See,  
9 e.g., AR 30, 207).

10  
11 Dr. Small's conclusions about Plaintiff's sedation and his need to  
12 lie down at unpredictable times appear to be based on Plaintiff's own  
13 reports, yet others found Plaintiff to be lacking in credibility. Dr.  
14 Smith repeatedly observed that Plaintiff lacked credibility and was  
15 malingering. The ALJ specifically found that Plaintiff's "statements  
16 concerning the intensity, persistence and limiting effects of [his]  
17 symptoms are not credible." (AR 46). Dr. Small presented no clinical  
18 findings to support her conclusion that Plaintiff is so sedated by his  
19 medication that he is unable to work, but relied entirely on Plaintiff's  
20 self-reporting.

21  
22 Dr. Small's report is also internally inconsistent. Although she  
23 concluded that Plaintiff should not operate machinery, she also checked  
24 the box indicating no restriction on Plaintiff's ability to work with  
25 machinery. (AR 271). Similarly, although Dr. Small found that  
26 Plaintiff's sedation would prevent him from climbing stairs, (id.), she  
27 also checked the box finding that Plaintiff could climb stairs  
28 frequently. (AR 270).



1 Although the ALJ had a specific and legitimate reason for rejecting  
2 Dr. Small's findings, he instead included them in the RFC. In his  
3 decision, the ALJ quoted Dr. Small's conclusion that Plaintiff should  
4 not be allowed to operate machinery, climb stairs, or be left alone.  
5 (AR 47). Dr. Small was the only physician who recommended that  
6 Plaintiff not operate machinery. As part of the RFC the ALJ found that  
7 Plaintiff "is precluded from operating dangerous or fast moving  
8 equipment," and cannot do work "requiring hypervigilance [sic]." (AR  
9 45). The ALJ therefore gave weight to Dr. Small's finding of sedation  
10 and included it in the RFC. To the extent that the ALJ rejected Dr.  
11 Small's conclusion that Plaintiff would be required to lie down at  
12 unpredictable intervals throughout the day, there was a specific and  
13 legitimate reason to do so. Dr. Small's findings were brief and  
14 conclusory, and were only supported by Plaintiff's questionable self-  
15 reporting of his symptoms. No remand is necessary.

16  
17 **B. The ALJ Properly Considered Any Side Effects Of Plaintiff's**  
18 **Medication**  
19

20 Plaintiff contends that the ALJ erred by not considering the side  
21 effects of Plaintiff's medications. (See Jt. Stip. at 9-12). Plaintiff  
22 argues that this requires a remand. (Jt. Stip. at 12). This Court  
23 disagrees.

24  
25 The Ninth Circuit has observed that an ALJ must "consider all  
26 factors that might have a significant impact on an individual's ability  
27 to work." Erickson v. Shalala, 9 F.3d 813, 817 (9th Cir. 1993)(citing  
28 Varney v. Secretary of SHS, 846 F.2d 581, 585 (9th Cir. 1987). Such

1 factors "may include side effects of medications as well as subjective  
2 evidence of pain." Erickson, 9 F.3d at 818. However, Plaintiff here  
3 presented no evidence that any side effects he may have had were severe  
4 enough to interfere with his ability to work, and thereby failed to meet  
5 his burden of proof. See Miller v. Heckler, 770 F.2d 845, 849 (9th Cir.  
6 1985) (claimant failed to meet burden of proving that an impairment is  
7 disabling where he produced no clinical evidence showing that his  
8 prescription narcotic use impaired his ability to work).

9  
10 At the hearing, Plaintiff testified that the side effects of his  
11 medication were "vomiting, dizziness, and [fatigue]." (AR 23). Other  
12 than in Plaintiff's testimony, there is little evidence in the record of  
13 the side effects Plaintiff reports. While under Dr. Barrozo's care,  
14 Plaintiff generally reported no side effects from his medication. (See,  
15 e.g., AR 232-34, 279-87). Plaintiff reported being dizzy to Dr. Smith,  
16 but he did not mention fatigue or vomiting. (AR 204). Dr. Smith found  
17 no evidence of these side effects, noting that Plaintiff's affect was  
18 "animated," (AR 209), and that he drove himself and his wife to the  
19 examination. (AR 207).

20  
21 Even though Plaintiff never complained of sedation so severe that  
22 he had to lie down at unpredictable intervals throughout the day, and  
23 even though Plaintiff is apparently capable of driving a car, Dr. Small  
24 still found that Plaintiff's medications "make him so lethargic he is  
25 not safe." (AR 270). She recommended that Plaintiff not operate  
26 machinery. (AR 271). Even though this conclusion was largely  
27 unsupported by the record, the ALJ included the restriction on Plaintiff  
28 operating "dangerous or fast moving equipment." (AR 45). Plaintiff has

1 not demonstrated that any other side effects he may have impair his  
2 ability to work. The ALJ did not err by not considering those side  
3 effects when determining Plaintiff's disability. No remand is required.  
4

5 **C. The ALJ's Hypothetical Was Complete**  
6

7 Plaintiff contends that the hypothetical presented by the ALJ to  
8 the VE was incomplete. (Jt. Stip. at 13-15). This Court disagrees.  
9

10 At the hearing, the ALJ presented the VE with the following  
11 hypothetical:  
12

13 Assume an individual the same age, education, and work  
14 experience as [Plaintiff]. Further assume the following  
15 residual functional capacity. Physically no limits, mentally  
16 this person is able to perform non-public simple, repetitive  
17 tasks. However he should not operate any dangerous or fast-  
18 moving machinery and should not be involved in safety  
19 operations or responsibility for the safety of others and  
20 . . . should not perform any work requiring hypervigilance  
21 [sic].  
22

23 (AR 32). Plaintiff contends that this hypothetical was incomplete  
24 because the ALJ did not include Dr. Small's findings that Plaintiff  
25 would need to lie down at unpredicted intervals, that he should not  
26 operate machinery, climb stairs, or be left alone, and also did not  
27 include "any mention of Plaintiff's multiple episodes of  
28 decompensation." (Jt. Stip. at 14).

1 In order for the vocational expert's testimony to constitute  
2 substantial evidence, the hypothetical question posed must "consider all  
3 of the claimant's limitations." Andrews, 53 F.3d at 1044. However, the  
4 ALJ is not required to include limitations for which there was no  
5 evidence. See Osenbrock v. Apfel, 240 F.3d 1157, 1164-65 (9th Cir.  
6 2001) (ALJ not bound to accept as true the restrictions set forth in  
7 hypothetical if they were not supported by substantial evidence).

8  
9 In crafting the hypothetical, the ALJ included all of the  
10 limitations supported by the evidence. As discussed above, the ALJ had  
11 good reason to doubt the findings of Dr. Small. Her conclusions were  
12 based on only a cursory examination of Plaintiff. Additionally, her  
13 conclusions relied on Plaintiff's own reporting of his symptoms, and the  
14 ALJ determined that Plaintiff was not credible. Nonetheless, the ALJ  
15 included in the hypothetical Dr. Small's recommendation that Plaintiff  
16 not operate machinery.

17  
18 Plaintiff contends that the hypothetical was insufficient because  
19 it did not mention Plaintiff's episodes of decompensation. (Jt. Stip.  
20 at 14). When Dr. Hurwitz examined Plaintiff for the State Agency he  
21 found that Plaintiff had gone through "one or two" episodes of  
22 decompensation. (AR 224). Plaintiff contends that these episodes of  
23 decompensation are reflected in the fact that doctors altered his  
24 medications. (Jt. Stip. at 14). Plaintiff presents no evidence that  
25 these isolated episodes of decompensation amounted to limitations on his  
26 ability to work. Contrary to Plaintiff's suggestion that his periods of  
27 decompensation were debilitating, the credible medical evidence from  
28 Drs. Small and Barrozo, Plaintiff's own treating physicians, suggested

1 that Plaintiff's schizophrenia was stabilized by the medication. (See,  
2 e.g., AR 233, 264). Because there was no evidence that Plaintiff's  
3 episodes of decompensation amounted to on-going limitations on his  
4 ability to work, the ALJ did not err by omitting them from the  
5 hypothetical. The hypothetical was complete, and no remand is required.

6  
7 **VIII.**

8 **CONCLUSION**

9  
10 The ALJ properly considered the opinion of Dr. Small, Plaintiff's  
11 treating physician. The ALJ properly considered the side effects of  
12 Plaintiff's medication. Finally, the hypothetical posed to the VE was  
13 complete. Accordingly, Plaintiff's contentions do not warrant remand.

14  
15 Consistent with the foregoing, and pursuant to sentence four of 42  
16 U.S.C. § 405(g),<sup>4</sup> IT IS ORDERED that judgment be entered AFFIRMING the  
17 decision of the Commissioner and dismissing this action with prejudice.  
18 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this  
19 Order and the Judgment on counsel for both parties.

20  
21  
22 DATED: August 14, 2009.

/S/

23  
24 SUZANNE H. SEGAL  
UNITED STATES MAGISTRATE JUDGE

25  
26 \_\_\_\_\_  
27 <sup>4</sup> This sentence provides: "The [district] court shall have power  
28 to enter, upon the pleadings and transcript of the record, a judgment  
affirming, modifying, or reversing the decision of the Commissioner of  
Social Security, with or without remanding the cause for a rehearing."